

CIVIL ACTION NO. 3-04-CV-1535L

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**AUTOBUSES TIERRA CLIENTE, INC.
DEFENDANTS**

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endorsement are before the Fifth Circuit, and it would be a waste of judicial resources (as well as the parties') to lift the stay to allow the appeal of a case that has identical facts controlling law and nearly identical facts as *Garcia Tours*.

III.

Lifting the stay may actually result in more prejudice and far greater chance of wasting judicial resources. Regardless of the party appealing from a final judgment in this case, the Fifth Circuit would be faced with essentially the same facts and issues as *Garcia Tours*. If an opinion was issued in *Garcia Tours* meanwhile, the Fifth Circuit would most likely remand for reconsideration by this Court based on its opinion and force this Court to consider the issue a third time! This is, however, only one possible event that may or may not occur in the future and illustrates that speculating as to what the Fifth Circuit will decide is futile at this point and does not assist in resolving this case.

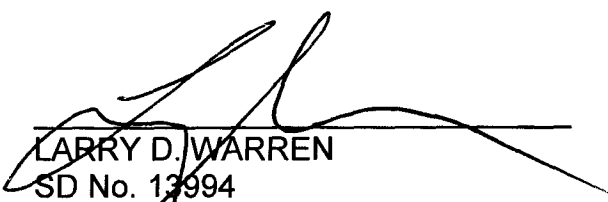
IV. CONCLUSION AND PRAYER

Garcia Tours involves issues and facts nearly identical and law which are identical to those in this case. For this reason, the Fifth Circuit's ruling in *Garcia Tours* would control this Court's decision regarding the various motions for summary judgment and Lincoln General's motion for reconsideration. There is no reason to lift the stay at this point just to allow parties to appeal.

WHEREFORE, PREMISES CONSIDERED, Lincoln General Insurance Company respectfully requests the Court to deny Intervenor's motion to reconsider and for such other relief to which Lincoln General Insurance Company may be justly entitled in equity and at law.

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

On the 6 day of June 2006, a true and correct copy of the foregoing document was forwarded to:

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